

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ROY JOHNSON,

No. C 10-04633 JSW

Plaintiff,

v.

COUNTY OF MONTEREY,

Defendant.

**ORDER ACCEPTING “DUE  
PROCESS” BRIEF AS SECOND  
AMENDED COMPLAINT AND  
DISMISSING ACTION WITH  
PREJUDICE**

On March 9, 2012, this Court issued an Order granting Defendant’s motion to dismiss. (Docket No. 40 (Order Granting Motion to Dismiss First Amended Complaint).) Plaintiff had asserted a claim that Defendant violated his due process rights, which he brought pursuant to 42 U.S.C. § 1983. The Court dismissed that claim, because Plaintiff had not alleged facts to show that Defendant had a custom, policy or practice relating to the alleged constitutional violations. (*See id.* at 7:1-8:2.) However, the Court granted Plaintiff one final opportunity to amend, and it directed that Plaintiff file his amended complaint by no later than April 27, 2012.

On April 9, 2012, the Court received an envelope of materials from Plaintiff. According to the proof of service submitted with those materials, Plaintiff submitted a “due process brief” and “various attachments.” The Court only received pages 17 and 18 of the purported brief. Because the Court did not receive a complete copy of the “due process brief,” the Court could not construe the documents it did receive as an amended complaint. As such, it required Plaintiff to file a complete copy of his brief by April 20, 2012, if he wanted the Court to consider it.

1 On April 18, 2012, the Court received a fully copy of the due process brief, which shall  
2 be filed forthwith. The Court liberally construes this brief to be Plaintiff's Second Amended  
3 Complaint. When Plaintiff filed his original complaint, he was granted leave to proceed *in*  
4 *forma pauperis*, pursuant to 28 U.S.C. § 1915. The *in forma pauperis* statute provides that the  
5 Court shall dismiss the case if at any time the Court determines the action (1) is frivolous or  
6 malicious; (2) fails to state a claim on which relief may be granted; or (3) seeks monetary relief  
7 against a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2).

8 The Court has reviewed the Second Amended Complaint. Plaintiff still fails to allege  
9 any facts that show the Defendant has a custom, policy or practice that relates to his alleged  
10 violations of his due process rights. Accordingly, Plaintiff still fails to state a claim against the  
11 Defendant under 42 U.S.C. § 1983. See *Monell v. New York City Dep't of Social Services*, 436  
12 U.S. 658, 691 (1978); *Blair v. City of Pomona*, 223 F.3d 1074, 1079 (9th Cir. 2000); *Oviatt v.*  
13 *Pearce*, 954 F.2d 1470, 1474 (9th Cir. 1992). The Court also advised Plaintiff that it was his  
14 final opportunity to amend his claims. Having failed to state a claim, the Court DISMISSES  
15 this action WITH PREJUDICE.

16 The Court shall issue a separate judgment, and the Clerk shall close this file.

17 **IT IS SO ORDERED.**

18 Dated: April 20, 2012

  
JEFFREY S. WHITE  
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

ROY JOHNSON,  
Plaintiff,

Case Number: CV10-04633 JSW

**CERTIFICATE OF SERVICE**

v.

COUNTY OF MONTEREY et al,  
Defendant.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on April 20, 2012, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Roy Johnson  
P.O. Box 5371  
Corning, CA 96021

Dated: April 20, 2012



Richard W. Wieking, Clerk  
By: Jennifer Ottolini, Deputy Clerk

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**CERTIFICATE OF SERVICE**

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Roy Johnson  
P.O. Box 5371  
Corning, CA 96021

Dated: April 20, 2012



Richard W. Wieking, Clerk  
By: Jennifer Ottolini, Deputy Clerk